UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

HYUNDAI MERCHANT MARINE (AMERICA), INC.;
HYUNDAI AMERICA SHIPPING AGENCY, INC.;
HYUNDAI INTERMODAL, INC.,[1]/

Employer

and Case No. 31-RC-7799

INTERNATIONAL LONGSHOREMAN &
WAREHOUSE UNION, AFL-CIO, LOCAL 63,
MARINE CLERKS ASSOCIATION, OFFICE
CLERICAL UNIT. [2]/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]/

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:[4]/

INCLUDED: All full-time and regular part-time office clerical employees (including those individuals working in marketing, pricing, sales, logistics, documentation, equipment control, bulk, customer service/support, accounting, human resources, information technology and claims), administrative assistants, freight cashiers, double stack train coordinators, receptionists, and Lisa Kuwabara, Lilly Wu, Diane Olivier, Gil Tanap, B.K. Bkang, Julie Kwon, and Dinilo Jardin employed by Hyundai Merchant Marine (America), Inc., Hyundai America Shipping Agency, Inc. and Hyundai Intermodal, Inc. at its facility located at 879 West 190th Street in Gardena, California.

EXCLUDED: All other employees, confidential employees, computer programmers, technical employees, professional employees, boarding agents, central planners, managers, guards and supervisors as defined in the Act, as amended.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United

States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Longshoreman & Warehouse Union, AFL-CIO, Local 63, Marine Clerks Association, Office Clerical Unit.**

LISTS OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***National Labor Relations Board v. Wyman-Gordon Company***, 384 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of the election eligibility list containing the **FULL** names and addresses of all the eligible voters shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, the list must be received in the office of Region 31, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **February 4, 2000**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of the list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 11**,** 2000.

DATED at Los Angeles, California this 28th day January, 2000.

/s/ Byron B. Kohn

Byron B. Kohn, Acting Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064-1824

FOOTNOTES

1/ The names of the Employer appear as corrected at the hearing.

2/ The name of the Petitioner appears as corrected at the hearing.

3/ The employers (hereinafter referred to as "Employer"), Hyundai Merchant Marine (America), Inc., Hyundai America Shipping Agency, Inc. and Hyundai Intermodal, Inc., are California corporations collectively engaged in the business of containerized shipping and intermodal transportation. The Employer maintains facilities throughout the United States and abroad, including the facility involved herein located in Gardena, California. Within the past 12 months, each of the three employers has provided services valued in excess of $50,000 directly to entities located outside the State of California. The Employer thus satisfies the statutory jurisdictional requirement, as well as the Board's discretionary standard, for asserting jurisdiction over non-retail establishments. ***Kenedy Compress Co.***, 114 NLRB 634 (1956).

4/ The parties have agreed to the inclusion of employees of each of the entities in a single unit.

The parties agree that the appropriate unit should include all full-time and regular part-time office clerical employees (including those individuals working in marketing, pricing, sales, logistics, documentation, equipment control, bulk, customer service/support, accounting, human resources, information technology and claims), administrative assistants, freight cashiers and receptionists employed by Hyundai Merchant Marine (America), Inc., Hyundai America Shipping Agency, Inc. and Hyundai Intermodal, Inc. at their facility located in Gardena, California. Confidential employees, computer programmers, technical employees, professional employees, managers, all other employees, guards and supervisors should be excluded.

The Petitioner asserts that central planners, boarding agents, and double stack train coordinators should be included in the appropriate unit. The Employer contends that central planners and boarding agents should be excluded from the unit because they are supervisors as defined in the Act and/or because they are managerial employees. The

Employer further contends that double stack train coordinators do not share a community of interest with the appropriate unit.

There is an additional issue with respect to seven named individuals regarding their inclusion in the appropriate unit. The parties stipulated, essentially, that all seven named individuals have the same performance appraisal responsibility as the central planner. Therefore, if this facet of the central planner's job qualifies him to be a supervisor within the meaning of Section 2(11), then each of the seven named individuals also would be a statutory supervisor. Otherwise, both parties stipulate that the seven named individuals should not be considered statutory supervisors but should be included in the appropriate unit.

FACTUAL BACKGROUND

The Employer, Hyundai Merchant Marine (America), Inc. ("HMMA"), Hyundai America Shipping Agency, Inc. ("HASA") and Hyundai Intermodal, Inc. ("HII"), are jointly engaged in the business of shipping containerized cargo and providing intermodal transportation services; the employers, collectively, transport containers and cargo between Asia and the United States. Containers and cargo are transported by ship between the two coasts. Once cargo reaches ports in the United States, the Employer transports the containers and cargo to various destinations within the United States via railroads and trucks.

The Employer maintains facilities throughout the United States and abroad, including the facility involved herein, which is located in Gardena (also referred to as "Los Angeles" at the hearing), California. HMMA is in charge of accounting, information and technology, human resources, and claims for both HASA and HII. HASA works as an agent for HMMA, providing sales, marine operations, equipment and maintenance. HII is the land transportation arm of HASA, providing services via railroads and trucking companies. The Employer's parent companies are located in Seoul, Korea.

DOUBLE STACK TRAIN ("DST") COORDINATOR

Petitioner seeks to include the DST coordinator in the unit while the Employer asserts he should be excluded.

Currently, there is one DST coordinator employed by the Employer (HII) at its facility in Gardena, California. There are approximately four other DST coordinators located throughout the United States, whom Petitioner does not seek to include. The DST coordinators report to, and are directly supervised by, the Director of Operations of HII, whose office is located in Irving, Texas. There are approximately four other HII employees (all in the marketing department) working at the Employer's Gardena facility. The parties have agreed that these employees are appropriately included in the bargaining unit. The HII marketing employees report directly to a manager in the Irving, Texas office.

The DST coordinator is responsible for coordinating and retrieving data when containers are discharged from vessels. He helps and assists with export cargo from rail carriers to vessels (also referred to as "ships" at the hearing), coordinates with local truckers where cargo is to be loaded, and ensures cargo is loaded in the right location on the rails.

Although the Employer contends that the DST coordinator has supervisory indicia and/or management responsibilities, there is a dearth of evidence in support of these contentions. The DST coordinator instructs people at the rail yard, gives directions to truckers as to where and when the cargo is to be loaded, and has the ability to tell trucking companies that a piece of equipment or container needs to be moved. There is no evidence, however, that the DST coordinator uses independent judgment in giving these directions. Further, the information relayed by the DST coordinator involves pre-planned directions, i.e., where the cargo is placed is not determined by the DST coordinator. Moreover, the DST coordinator does not responsibly direct ***employees of the Employer***. The DST coordinator does not have the authority to hire or fire, or effectively to recommend such actions, and he is not involved in formulating or effectuating management policies. The evidence, therefore, is insufficient to establish either that the DST coordinator possesses

supervisory authority within the meaning of Section 2(11) of the Act, or that he is a managerial employee.

Since I have concluded that the DST coordinator is not a supervisor or managerial employee, the next issue is whether he should be included in the appropriate unit based upon a community of interest with other petitioned-for employees. The appropriateness of a given unit rests on the group of employees being united by a community of interest and free of substantial conflict of economic interests. ***Armco, Inc.***, 271 NLRB 350, 351 (1984).

In conducting a community of interest analysis, the Board examines a number of factors such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision, and differences or similarities in training and skills. ***Atlanta Hilton & Towers***, 273 NLRB 87 (1984), *modified on other grounds*, 275 NLRB 1413 (1985); ***Moore Business Forms, Inc.***, 173 NLRB 1133 (1968); ***Harron Communications, Inc.***, 308 NLRB 62 (1992); ***Allied Gear and Machine Co.***, 250 NLRB 679 (1980); ***Associated Milk Products, Inc.***, 251 NLRB 1407 (1980); ***R-N Market***, 190 NLRB 292 (1971); ***Kalamazoo Paper Box Corp.***, 136 NLRB 134, 137 (1962).

The evidence indicates that the DST coordinator in Gardena shares the same medical benefits, retirement plans and benefits package, and is covered by the same vacation policy as other employees the parties have agreed to include in the unit. Moreover, the DST coordinator has frequent work-related contact with employees of HII, HASA and HMMA who the parties have agreed to include in the unit. His office is located on the same floor as other employees included in the unit, and he uses the same lunchroom.

Based upon the evidence described above, and the record as a whole, I conclude that the DST coordinator shares a community of interest with other employees the parties have agreed to include in an appropriate unit and therefore should be included.

BOARDING AGENT

Petitioner seeks to include the boarding agent in the petitioned-for unit. The Employer asserts that the boarding agent is a statutory supervisor and/or a managerial employee.

At the time of the hearing, the record indicated that the Employer employed one boarding agent (also referred to as "port captain" at the hearing) at its facility in Gardena, California. The boarding agent is responsible for meeting vessels containing the Employer's containers and cargo at the Long Beach, California terminal (also referred to as "port" at the hearing). The boarding agent boards the vessel and meets the vessel's captain. He also arranges for ground transportation if a crew member is ill; arranges for supplies or food for crew members on the vessel; and arranges for pilots (individuals who board vessels and help guide them into port), tug boats, linesmen (individuals responsible for tying vessels to the dock), and customs brokers. The pilots, tug boats, linesmen and customs broker are contracted by the Employer. The services (e.g., doctors, hospitals, etc.) that the boarding agent arranges for vessel crew members are pre-approved by the Employer. The boarding agent does not negotiate contracts for said services, nor does he have the independent authority or discretion to change the contractors without approval of his superiors. The boarding agent is also responsible for making sure that cargo is loaded and unloaded properly according to pre-determined plans. The boarding agent does not create the loading and unloading plans.

There is no evidence that the boarding agent has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or adjust grievances, or effectively to recommend such action with the use of independent judgment. The record is void of evidence showing that the boarding agent responsibly directs ***employees of the Employer***. The evidence also fails to show that the boarding agent formulates or effectuates management policies. I, therefore, conclude that the boarding agent is neither a statutory supervisor nor a managerial employee.

Neither party raised the issue of whether the boarding agent has a sufficient community of interest with the petitioned-for unit. There is little evidence in the record regarding the traditional community of interest factors. One witness indicated that the boarding agent spends approximately 85% of his time at the Long Beach terminal, thus, away from the Gardena facility. It appears from the record that that there are no employees in the petitioned-for unit who work at the Long Beach terminal. The boarding agent, therefore, has minimal, if any, contact with employees of the petitioned-for unit. Most of his time is spent at the terminal in Long Beach, California working with non-unit employees. There

is no evidence that the boarding agent has an office or desk at the Employer's Gardena facility (where all of the petitioned-for unit employees are located). While it appears that most of the petitioned-for unit employees work at a desk with computers, the boarding agent's duties require him to be on a vessel and physically overseeing the unloading and loading of cargo. The boarding agent is trained and skilled in maritime operations unlike most of the unit employees who are trained and skilled in more clerical work. The record contains no evidence that the boarding agent receives wages or benefits on the same basis as employees in the petitioned-for unit, nor is supervised by any of the same immediate supervisors.

Based on the evidence described above, and the record as a whole, I conclude that the boarding agent does not have a sufficient community of interest with the petitioned-for unit and therefore is excluded from the appropriate unit.

CENTRAL PLANNER OR MANAGER OF MARINE OPERATIONS

Petitioner seeks to include the central planner in the petitioned-for unit. The Employer asserts that because the central planner is a manager of the marine operations he should be excluded from the appropriate unit as a statutory supervisor and/or managerial employee.

Before considering the supervisory and managerial issues, I note that, even assuming the central planner is deemed to be an "employee" within the meaning of Section 2(3) of the Act, for the reasons set forth below, I find that he does not share a sufficient community of interest with the appropriate unit.

The evidence reveals that the central planner deals primarily with non-unit employees. Although the central planner works out of the Gardena facility where all the petitioned-for unit employees work, he deals primarily with non-unit employees at terminals located in Long Beach, California; Oakland, California; Portland; Oregon, Seattle (also referred to

as "Tacoma"), Washington; and Vancouver, B.C. He also works closely with non-unit

employees located in the Employer's Scottsdale office. At the Gardena facility, he primarily deals with management personnel. The central planner testified that he spends approximately 12-15 hours a week performing boarding agent duties, which is work outside the scope of the petitioned-for unit. Like the boarding agent, the central planner is trained and skilled in maritime operations. The central planner spends a substantial amount of time at the Long Beach terminal every month and occasionally travels to terminals along the West Coast. No petitioned-for employees work at these terminals.

For the foregoing reasons, I do not find that the central planner has a sufficient community of interest with the petitioned-for unit and therefore should not be included.

Notwithstanding my conclusion that the central planner does not share a sufficient community of interest with the appropriate unit, the Employer asserts that the central planner is a statutory supervisor and/or a managerial employee.

Section 2(11) of the Act defines "supervisor" to mean:

> [A]ny individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To qualify as a supervisor, it is not necessary that an individual possess all of the indicia specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. ***Chicago Metallic Corp.***, 273 NLRB 1677, 1689 (1985). It is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) of the Act does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. *Ibid.* Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an

employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. ***Opelika Foundry***, 281 NLRB 897, 899 (1986).

The party attempting to exclude individuals from voting for a collective bargaining representative has the burden of proving that such individuals are statutory supervisors. ***Bennet Indus., Inc.***, 313 NLRB 1363 (1994); ***Golden Fan Inn***, 281 NLRB 226, 229-230 fn. 24 (1986); ***Tucson Gas & Elec. Co.***, 241 NLRB 181 (1979).

The Employer, at the time of the hearing, employed only one central planner at its facility in Gardena, California. The central planner is employed by HASA in the marine operations department. The record ambiguously indicates that the central planner may have been promoted to manager of marine operations sometime in 1998; he acknowledges that he has been referred to as manager of marine operations by other management personnel. He has been referred to as manager of marine operations on documents, and has referred to himself as "manager" on some documents.

In support of its position that the central planner is a statutory supervisor the Employer adduced testimonial and documentary evidence indicating that the central planner recommended at least three individuals for hire. The central planner screened numerous candidates for at least one position by interviewing the candidates and making comments as to their qualifications for upper management personnel and/or human resources consideration.

In about March 1998, the central planner recommended to the then vice president of marine operations that the Employer hire a particular individual for the position of assistant manager of terminal operations. The central planner memorialized his recommendation in a memorandum. The then vice president of marine operations testified that ***90%*** of his decision to hire that particular individual was based on the central planner's comments and recommendation.

The evidence indicates, however, that two managers, the then vice president and the director of marine operations, as well as the central planner all individually interviewed this applicant who was eventually hired for the assistant manager of terminal operations position. The then vice president interviewed the applicant for about 45 minutes to one hour, and acknowledged that in making his decision to hire the applicant, he took into account the central planner's opinion, the director's opinion, and his own impressions of the applicant based on his interview.

In about April or May 1999, the central planner reviewed numerous resumés and interviewed a number of candidates for two positions at the Employer's Scottsdale (also referred to as "Phoenix" at the hearing), Arizona office. In a memorandum dated April 20, 1999, based upon these reviews and interviews, the central planner recommended that a particular individual be hired as assistant manager/central planner for the Scottsdale office. He also recommended a starting salary for that individual. Apparently, management accepted the central planner's recommendation because that individual was offered the position. The central planner, however, testified that the eventual hire initially interviewed with another manager in Asia. The record also indicates that, when the eventual hire was interviewed in Gardena, a higher manager conducted the interview along with the central planner, and that the higher manager did "most of the talking" at the interview and decided to hire this particular individual at the meeting.

In the third instance, in approximately May 1999, it appears that the Employer did not follow the central planner's recommendation to hire a particular individual for a manager/ planner position in the Scottsdale office.

The Employer asserts that in addition to the central planner's recommendations of hire, he also recommended against hiring and promoting individuals. As mentioned above, the central planner reviewed resumés and interviewed candidates for at least two positions. If the central planner deemed a candidate not qualified, he would not forward the candidate's resumé to upper management and/or human resources thereby effectively preventing further consideration of that applicant. In a memorandum dated March 25, 1999, the central planner recommended against promoting two employees working at the Gardena office for positions in Scottsdale. Both employees eventually transferred to Scottsdale, but neither was promoted, consistent with the central planner's recommendations.

Although there is evidence that the central planner reviewed resumés and recommended that some individuals not be interviewed, the Board has held that the ability to screen resumés and to make such recommendations, even if followed, is insufficient to establish the authority to effectively recommend the hire of employees. ***International Center for Integrative Studies/The Door***, 297 NLRB 601, 602 (1990). I, therefore, find that the central planner's screening and negative recommendations are insufficient to establish supervisory status. In this context, I note that the then vice president acknowledged that he independently interviewed the eventual assistant manager of terminal operations, and the hiring decision was based on collective opinions. Additionally, there is evidence that on at least one occasion, the central planner's recommendation for hire was not followed. The other instance where a job offer was made based apparently upon the central planner's recommendation is simply insufficient, in light of the

central planner's testimony regarding the role a higher manager played in the hiring process, to conclude that the central planner possessed and exercised this supervisory indicia.

There is documentary evidence that the central planner completed performance appraisals for at least two employees during their initial probationary periods of 30 days and 60 days, and for their annual appraisals. Annual appraisals are used by the Employer for determining salary increases and promotions; the 30-day and 60-day appraisals are not. The purpose of the annual appraisals is to monitor an employee's progress, to compensate an employee for his or her year's work, and for promotions. The record reveals that a personnel committee (also referred to as "executive committee" at the hearing) reviews each employee's annual appraisal to determine whether an employee will receive a raise or promotion. The personnel committee looks primarily at the overall performance rating given by the appraiser. The personnel committee, however, can adjust the rating given by the appraiser. A memorandum to the department managers outlining the appraisal procedures states in pertinent part: "Positive performance appraisals do not guarantee salary increases or promotion. Under certain circumstances, executive committee can override any decisions."

There is evidence that the size of salary increases is also determined by an employee's economic situation, i.e., lower paid employees sometimes receive higher salary increases even if their ratings are the same as higher paid employees.

In one employee's annual appraisal, the central planner recommended a salary increase
and promotion. Nonetheless, the employee was not promoted.

Since the personnel committee exercises the ultimate decision whether to grant raises and/or promotions and on occasion has not followed the central planner's recommendation, the central planner's annual appraisals do not automatically lead to a salary increase or promotion, and thus do not reflect a supervisory indicia. *See* ***Hausner Hard-Chrome of KY, Inc.***, 326 NLRB No. 36 (1998)(employees not supervisors because, *inter alia*, their evaluations did not affect the decision to give raises or promotions in any direct or systematic way); *Cf.*, ***Harbor City Volunteer Ambulance Squad, Inc.***, 318 NLRB 764 (1995) (individuals found to be supervisors because their evaluations automatically led
to wage increase without ever being changed by upper management).

The record reflects that the central planner has approved a number of leave requests and rejected one, even though requests are reviewed by management. For example, the central planner rejected one employee's leave request, dated May 11, to take leave on June 10. The central planner rejected the employee's leave request on or about May 28. The employee did not take leave on June 10, because of the central planner's disapproval of the request. A manager rejected the same request on June 13, three days after the intended leave date. Thus, it appears that the central planner had the determining authority, in this instance, to reject that particular employee's leave request.

This one isolated instance of apparent discretion to reject an employee's leave request does not, however, reflect statutory supervisory status. The evidence indicates that the central planner is sometimes the first person to receive a leave request, while other times he is the last person to receive a request. The evidence is, therefore, inconclusive

to establish whether the central planner has the ultimate authority to approve or disapprove leave requests.

The evidence is nebulous regarding whether the central planner directs and assigns work to employees of the Employer.

The central planner directs the Employer's vessel planners as to where to place containers carrying hazardous materials. Since containers carrying hazardous materials are placed in certain areas of the vessel according to strict guidelines that he does not set, it cannot be concluded that the central planner uses independent judgment to direct the vessel planners.

While the Employer asserts that the central planner assigns duties to certain employees of the Employer, no evidence was adduced demonstrating that such assignments were made in an other than routine or clerical manner, using independent judgment.

The burden of proving supervisory status rests on the party alleging that such status exists. ***Tucson Gas & Electric Co.***, 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. ***Quadrex Environment Co.***, 308 NLRB 101, 102 (1992). Based on the foregoing and upon the record as a whole, I conclude that the Employer has not met its burden of proving that the central planner possesses any indicia of supervisory status as defined in Section 2(11) of the Act.

In addition to supervisory authority, the Employer asserts that the central planner is a managerial employee and therefore is to be excluded from the unit. In ***NLRB v. Bell Aerospace Co.***, 416 U.S. 267, 289 (1974), the Court held that managerial employees

were also excluded from the Act's protection. The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." ***General Dynamics Corp.*****,** 213 NLRB 851, 857 (1974). The Court in ***NLRB v. Yeshiva University***, 444 U.S. 672, 682 (1980) stated that managerial employees are "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary." ***Id.*** at 682; ***NLRB v. Bell Aerospace Co.***, 416 U.S. 267, 283 (1974).

In support of its contention that the central planner is a managerial employee, the Employer produced testimonial and documentary evidence that the central planner negotiates contracts on behalf of the Employer with terminal operators, alliance partners, and tugboat companies. These negotiations consist of either telephone conversations or face-to-face meetings discussing such issues as reciprocal rates with alliance partners and per box rates (rates terminals charge the Employer to handle each container) with terminal operators.

The Employer proffered a stevedoring contract between HMMA and a terminal operator in Vancouver, Canada, signed by the central planner. The central planner was the Employer's direct representative in negotiations with the terminal operator. The central planner did not have face-to-face meetings, but rather negotiated through correspondence. After concluding negotiations, the central planner signed the contract. The central planner admits that he may have signed other contracts as well.

The evidence indicates that the central planner attended a meeting in Seattle, Washington, to negotiate a stevedoring contract with two shipping companies (alliance partners with the Employer) and the terminal operator. The central planner negotiated the contract on behalf of the Employer. No other management personnel from the Employer was present at this meeting. The purpose of the meeting was to negotiate the best rates for the Employer for loading and unloading its vessel. The central planner presented counterproposals to proposals presented by a terminal operator representative. Although he may have received instructions from his superiors in Seoul before presenting his

counterproposals,
a letter drafted by the central planner accompanying his counterproposals indicates that the counterproposals were from his own initiative. The central planner testified that some of his counterproposals were incorporated in the final agreement. The central planner admitted that he had similar negotiations and meetings with other terminal operators in Southern California and in Portland, Oregon. The evidence indicates that the contracts the central planner negotiated cost the Employer as much as $10-15 million a year.

The record reveals that the central planner attended at least two meetings with alliance partners, terminal operators or stevedoring companies without anyone else from upper management being present. These meetings included discussions about rates and handling issues.

In addition to negotiating and signing contracts and attending meetings, the central planner also recommended restructuring the marine operations department at the Employer's Scottsdale office. The central planner had a discussion with the Employer's president regarding the staffing arrangements. The central planner memorialized his staffing recommendations to his superior and sent a copy to the President of the Employer (HMM, HASA and HII), whose office is located in Gardena. As a result of the central planner's staffing recommendation, a manager/planner position was created at the Scottsdale office.

The Employer proffered the central planner's job description, which was drafted by the central planner himself after performing his job as a central planner for about two years. The central planner submitted this job description to his former boss in about 1998, and re-submitted this same job description without changes to his then boss in January 1999.

In this job description, the central planner lists a number of managerial-type responsibilities and duties, including: compiling coastal schedules and managing the overall movement of vessels; estimating move counts in each port;

computing time needed in each port; calculating distance speed and time; delegating to a non-unit employee how to make the coastal schedule; monitoring all schedule input; keeping vessels on schedule; serving as liaison with terminals; overseeing the planning of vessels by the union planners; consulting with the Long Beach terminal on their operation on vessels and in their yard; serving as the key person for any issues the terminal may have with HMM; negotiating all contracts on the West Coast and with alliance partners; negotiating all Southern California agreements; negotiating the Oakland agreement; negotiating the Port of Portland agreement; negotiating the Seattle agreement; attending meetings with other Employers; checking contractual performance; consulting, educating and "supervising" in-house employees; helping the marketing department with special requests; "supervising" two non-unit employees; giving vessel tours to in-house employees and to customers; checking all invoices for all West Coast ports; resolving billing discrepancies; and producing special reports.

Although the central planner testified that he no longer performs some of the listed duties, including negotiating contracts, there is no evidence that any of these job-description
listed responsibilities and duties have been removed. The central planner's former boss
and current boss both testified that his responsibilities and duties have not changed since he submitted this job description.

The testimonial and documentary evidence indicates that the central planner is referred to as a manager by management personnel, by non-unit employees, and by himself. As discussed above, non-unit employees submit leave requests to

the central planner. Although approval or disapproval of these leave requests do not establish the central planner's Section 2(11) supervisory authority, I note that the leave requests are submitted to only a "pool" of management personnel of which the central planner is deemed to be a part.

The central planner testified that his responsibilities and duties are merely clerical in nature, including inputting information into a computer, filing papers, and printing and copying information, notwithstanding the record evidence reflecting that the central planner's annual income in 1999 was approximately $68,000.

The foregoing examples of the central planner's responsibilities and duties demonstrate that the central planner is a managerial employee within the meaning of ***NLRB v. Bell Aerospace Co.***, 416 U.S. 267, 289 (1974) and ***NLRB v. Yeshiva University***, 444 U.S. 672, 682 (1980).* Since I conclude the central planner is a managerial employee, he should be excluded from the appropriate unit.

STATUS OF SEVEN NAMED INDIVIDUALS

As noted above, there is an additional issue with respect to seven named individuals regarding their inclusion in the appropriate unit. These seven individuals include Lisa Kuwabara, Lilly Wu, Diane Olivier, Gil Tanap, B.K. Bkang, Julie Kwon and Dinilo Jardin. There was no testimony at the hearing regarding these seven individuals' job titles. Some of them, however, are identified in the Employer's organizational chart in evidence. Ms. Kuwabara is employed at the Employer's HASA LA office in the W/B CS department; Ms. Wu is employed at the Employer's HASA LA office in the F/C department; Ms. Olivier is employed at the Employer's HASA LA office in the E/B CS department; Mr. Tanap is employed at the Employer's HASA HQ office in the Pricing

* At the hearing, the Employer moved to dismiss the petition herein at issue (31-RC-7799) because of asserted taint in developing the showing of interest by the central planner as a supervisor or manager. Notwithstanding my conclusion that the central planner is a manager, I take administrative notice, based on my investigation of 31-CB-10572, that the central planner's participation in gathering the showing of interest was de minimis. I therefore deny the Employer's motion to dismiss the instant petition.

Department; and Mr. Jardin is employed at the Employer's HASA HQ office in the BULK department.

The parties stipulated that if the central planner is determined to be a statutory supervisor based solely on his responsibility to perform appraisals, then these seven individuals should also be considered statutory supervisors since they are stipulated to have the same performance appraisal responsibilities as the central planner. Otherwise, the parties agree that these seven individuals should not be considered statutory supervisors but should be included in the appropriate unit.

As discussed above, I concluded that the central planner's performance appraisal duties do not reflect statutory supervisory authority. Therefore, since the parties stipulated that the only indicia of statutory supervisory status of these seven individuals is the performance of appraisals, I find that these seven individuals are not supervisors within the meaning of Section 2(11) of the Act; thus, they should be included in the appropriate unit.

There are approximately 60 employees in the unit found appropriate

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